IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 8296 of 1992
with
Special Civil Application No.8301 of 1992

For Approval and Signature:
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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DEPUTY EXECUTIVE ENGINEER

Versus

NANDLAL KHODABHAI

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Appearance:
1. Special Civil Application No. 8296 of 1992
MR DG CHAUHAN for Petitioner No. 1
MR RUPEN M SHAH for Respondent No. 1

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/06/2002

ORAL JUDGEMENT

Both these petitions are disposed of by this common order because the point involved in both these petitions is common.

It is the case of the Gujarat Water Supply and Sewerage Board that in view of the fact that regular employees of the Board were on strike during the intervening period, as a stop gap arrangement, the Board gave appointment orders to certain workmen and, ultimately, when the said strike was called off by the regular employees and since they were ultimately taken back in service, the services of the employees who were taken on stop gap arrangement were required to be

terminated. Accordingly, the petitioner-Board terminated the services of the concerned workmen with effect from 22.8.1985, as, according to the Board, they were taken purely on temporary basis in the stop gap vacancy and because of the circumstances narrated above, they were given such temporary appointment.

The termination order was challenged by the workmen by raising Industrial Dispute. The dispute was referred to the Labour Court, Rajkot and in so far as Special Civil Application No.8296 of 1992 is concerned, the same was numbered as Reference (LCR) No.438 of 1989. So far as Special Civil Applicaiton No.8301 of 1992 is concerned, the same was numbered as Reference (LCS) No.448 of 1989. The Labour Court allowed the aforesaid References and passed an order of reinstatement with 25% back wages as well as 40% back wages, respectively. The aforesaid Award of the Labour Court is impugned at the instance of the Gujarat Water Supply and Sewerage Board in the present petitions.

At the time of hearing of these petitions, it was argued by Mr.Chauhan, appearing for the petitioners, that the concerned workmen were given appointment orders hardly for three months and that too on a purely ad hoc and temporary basis as the regular employees were on strike and in order to see that the important work of the Board is not hampered with, such stop gap arrangement was adhered to. He further submitted that neither of the two workmen had completed 240 days in a particular year. He also submitted that it was not possible for the Board to continue the services of these employees because, in view of the economy measure and especially when the regular employees reported for duty, it was not possible for the Board to continue these additional staff. He submitted that the Labour Court has completely misread the evidence on record and has committed an error of law in passing an order of reinstatement. It is, therefore, argued that the order in question is required to be quashed and set aside.

I have heard Mr.Chauhan and I have also gone through the Award and copy of the evidence which is annexed with the petition. Learned Advocate for the respondent-workmen is not present when the matters were called out.

It is required to be noted that the before the Labour Court, on behalf of the Management, certain documents were produced, such as letter about effecting economy measure dated 20.7.1985, Labour Register for the

period between 1.5.1985 and 31.5.1985 as well as from 1.6.1985 to 30.6.1985, from 1.7.1985 to 31.7.1985 and for a particular fixed period. Even the receipt of payment is also produced before the Labour Court, showing that the salary is paid between 1.5.1985 upto 22.8.1985.

It is submitted by Mr.Chauhan that the evidence produced by the Management clearly shows that the payment of salary is made only for the aforesaid fixed period and thereafter, there is no such receipt even prior to the aforesaid period or subsequent to that period. It is, therefore, submitted that the concerned workmen were appointed purely as a stop-gap arrangement and because of the circumstances narrated by the Management regarding non-availability of the regular staff, who were on strike at the relevant time.

It is required to be noted that so far as the workman of Special Civil Application No.8296 of 1992 is concerned, he was relieved from service on 22.8.1985. The said statement was clearly made in his Chief Examination. In cross-examination, he has clearly stated that he was taken on service on 1.5.1985, but in cross-examination, he has denied that his services were terminated with effect from 22.8.1985. However, in his evidence, he has clearly stated that he was taken in service on 1.5.1985 and it is also clear that he was relieved from service on 22.8.1985. Even the workman of Special Civil Application No.8301 of 1992 was also relieved from service on 22.8.1985.

The aforesaid evidence, therefore, suggests that the aforesaid workmen were appointed purely on ad hoc basis for a temporary period of a few months. There is absolutely nothing on record to show that they were appointed for more than two or two and half years, as suggested by the workmen before the Labour Court in their evidence. The Management has also produced the evidence of pay slip, etc., which also clearly suggests that payment was also made for a temporary period regarding their salary. Even the Management has also produced payment register, which shows the number of days, during which these workmen have worked.

Considering the totality of the facts and evidence on record, it is clear that the concerned workmen have not put in more than 240 days' service and only for a few months, appointment was given since the regular employees were on strike.

At this stage, reference is also required to be

made to the decision of the Apex Court in Range Forest Officer v. S.T. Hadimani, AIR 2002 SC 1147. In the aforesaid decision, it has been found by the Apex Court in paragraph 3 as under :-

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> 3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "Industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratam Singh Narsinh Parmar (JT 2001 (3) SC 326). In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the Appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr.Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.
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> ... ... ...."

In the instant case, the concerned workmen have not produced any satisfactory evidence worth the name to substantiate their say that they have served for more than 240 days or any junior to them has been continued after their services were terminated. As against that, the Management has produced the pay slip and other

documentary evidence to substantiate their say that the concerned workmen were appointed only for a limited period for the reasons narrated in the oral evidence. Under the aforesaid circumstances, in my view, the Tribunal has not properly considered the documentary evidence produced by the Management and from the record, it is clear that the concerned workmen have served hardly for 2 to 4 months. It is, therefore, not a case in which order of reinstatement with 25% and 40% back wages, respectively, should have been passed. The Tribunal has not taken into consideration the relevant facts and circumstances of the case and has, therefore, committed serious error of law in passing the impugned Award of reinstatement. The order of the Tribunal is, therefore, required to be quashed and set aside and it is accordingly quashed and set aside.

However, it is required to be noted that at the time of admitting these petitions, this Court has not stayed the order of reinstatement and the interim relief was granted only qua back wages. Mr.Chauhan for the petitioners submitted that, subsequently, in view of the fact that the interim relief was not granted against reinstatement, the concerned workmen were taken in service. However, subsequently, the services of both the aforesaid workmen were again terminated on 12.3.1993 on the ground of non-availability of work. However, this Court is not concerned with the subsequent order. But, one thing is certain that since no interim relief was granted by this Court against reinstatement, the concerned workmen have worked upto the date till their services were again terminated by the Management. Mr.Chauhan has, therefore, submitted that the Management will not take any action for taking back the salary for the intervening period and no action will be taken against the concerned workmen for directing them to pay back the amount of salary, as, even otherwise also, on the basis of quantum meruit, they are entitled to have the salary during which they have served the Institution. The aforesaid concession of Mr.Chauhan is also recorded.

With the aforesaid observations, the petitions are allowed. The orders of the Labour Court are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

17th June, 2002. ( P.B. Majmudar, J. )

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(apj)